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FM SECSTATE WASHDC

TO AMEMBASSY MANILA

C O N F I D E N T I A L STATE 088804

E.O. 11652: N/A

TAGS: EAIR, RP

SUBJECT: CIVAIR - GOP DECREES ON AIR PREFERENCES

REF : (A) MANILA 3357, (B) MANILA 3358, (C) MANILA 3359

1. SUMMARY: BOTH DECREES 894 AND 895 AND CHANGES IN MANILA GROUND HANDLING AND LANDING CHARGES, IF IMPLEMENTED IN BROAD FASHION, COULD RESULT IN SERIOUS DISCRIMINATION AGAINST U.S. AIRLINES AND MIGHT FORCE USG TO RETALIATE. EMBASSY IS REQUESTED TO REPORT ON EFFECT OF DISCRIMINATIONS ON U.S. AIRLINES, EXPLORE POSSIBLE MULTI-COUNTRY DEMARCHE BY ALL CONCERNED PARTIES, AND CONSIDER INFORMING GOP OF POSSIBLE RETALIATORY ACTION BY USG. GOAL IS TO HAVE DECREES AMENDED OR FAILING THAT, TO HAVE THEM IMPLEMENTED IN MANNER WHICH WOULD NOT DAMAGE U.S. INTERESTS AND WOULD AVOID NEED FOR RETALIATION. SHIPPING ISSUES HANDLED SEPARATELY. END SUMMARY.

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2. USG AGREES WITH EMBASSY'S INTERPRETATION OF DECREE 894 THAT RESERVATION OF TRAFFIC FOR PHILIPPINE CARRIERS IS

SO BROAD THAT IT COULD INCLUDE MAJOR PORTION OF PHILIPPINE PRIVATE SECTOR. SUCH IMPLEMENTATION WOULD SERIOUSLY IMPAIR RIGHTS OF FOREIGN CARRIERS TO DO BUSINESS IN PHILIPPINES AND USG WOULD HAVE NO ALTERNATIVE BUT TO RETALIATE. U.S. HAS EXPRESSED CONCERN OVER THESE AND OTHER DISCRIMINATORY MEASURES IN ECONOMIC NEGOTIATIONS THAT BEGAN MARCH 29. PHILIPPINE DELEGATION NOTED BUT DID NOT RESPOND.

3. EMBASSY REQUESTED TO REPORT INSTANCES OF DISCRIMINATION RESULTING FROM DECREE 894, EXTENT OF BURDEN ON AIRLINES AND NATURE OF PROCEDURES USED BY GOP IN IMPLEMENTING DECREE. WOULD ALSO APPRECIATE ANY INFORMATION ON RECENT REPORTS FROM AIRLINES THAT PHIL TOURIST BUREAU SUGGESTING POSSIBILITY OF GOP MOVING TO UNLIMITED CAPACITY. DO YOU SEE ANY RELATIONSHIP BETWEEN THIS PROPOSAL AND DECREE? EMBASSY SHOULD ALSO EXPLORE POSSIBILITY AND APPROPRIATENESS OF MULTI-COUNTRY DEMARCHE LIMITED TO AIR TRANSPORT.

4. PROVISIONS OF DECREE 895 ARE IN MANY RESPECTS SIMILAR TO SECTION 3 OF U.S. FAIR COMPETITIVE PRACTICES ACT. REFERENCE IN 895 PREAMBLE TO MANY COUNTRIES' FAILURE TO CONSIDER COSTS IN SETTING CHARGES SUGGESTS THAT COSTS WILL BE CONSIDERED IN DETERMINING WHETHER OR NOT CHARGES "UNREASONABLY EXCEED" SIMILAR CHARGES IN PHILIPPINES. PLEASE CONFIRM, IF POSSIBLE.

5. RUMORED 300 PERCENT INCREASE IN MANILA LANDING CHARGES WOULD INCREASE SPREAD BETWEEN MANILA AND U.S. AND WOULD ADD SUBSTANTIALLY TO U.S. CARRIER COSTS. LANDING CHARGES FOR 707 AIRCRAFT ALREADY LOWER AT GUAM, HONOLULU, LOS ANGELES AND SAN FRANCISCO THAN AT MANILA. EMBASSY REQUESTED TO DETERMINE LIKELIHOOD OF LANDING CHARGE INCREASE AND ITS EFFECT ON U.S. CARRIERS.

6. WITH REGARD TO RELATED ISSUE OF GROUND HANDLING MONOPOLY (PARA 4, REF A), USG BELIEVES FREE MARKET IN THIS AREA IS MOST DESIRABLE, BUT IT WILL NOT OBJECT TO
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A SINGLE COMPANY SOURCE, PROVIDED EACH CARRIER RETAINS RIGHT TO SUPPLY ITS OWN GROUND HANDLING USING IN-COMPANY RESOURCES. EXPERIENCE SHOWS ESTABLISHMENT OF GROUND HANDLING MONOPOLY USUALLY ATTENDED BY HIGHER COSTS FOR LESS RESPONSIVE SERVICE AND LEADS TO DISCRIMINATION. WOULD GOP OBJECT IF U.S. CARRIERS WERE TO COLLECTIVELY MEET GROUND HANDLING NEEDS?

7. DEPT WOULD APPRECIATE EMBASSY'S VIEWS ON POSSIBLE GOP RETALIATORY ACTION UNDER DECREE 895 IF A FINE WERE

TO BE LEVIED ON PAL FOR ILLEGAL JULY 1974 DC-10 FLIGHT.

8. EMBASSY MAY AS APPROPRIATE INVITE ATTENTION OF GOP TO FACT THAT THESE DECREES, IF IMPLEMENTED SO AS TO IMPACT HEAVILY ON U.S. CARRIERS, MIGHT PUT U.S. UNDER

PRESSURE TO ADOPT RETALIATORY MEASURES, SUCH AS SECTION 402 OF FEDERAL AVIATION ACT AND ECONOMIC REGULATIONS OF CAB, WITH PARTICULAR REFERENCE TO 14 CFR PART 213: ALL FOREIGN AIR CARRIER PERMITS CONTAIN A CONDITION WHICH ALLOWS CAB TO DISAPPROVE SCHEDULES OF FOREIGN AIRLINE WHEN ITS GOVERNMENT HAS, OVER OBJECTIONS OF USG, TAKEN ACTION WHICH DENIES OR IMPAIRS RIGHTS OF U.S. CARRIERS.

9. OF COURSE, SECTION 3 OF U.S. FAIR COMPETITIVE PRACTICES ACT WOULD COME INTO PLAY IF PHILIPPINES UNJUSTIFIABLY IMPOSES CHARGES ON U.S. AIRLINES. SUCH PHILIPPINE CHARGES MAY ALSO BE CONTRARY TO ARTICLE 15 OF CHICAGO CONVENTION SINCE, UNLIKE U.S. COMPENSATORY CHARGES, WHICH ARE IMPOSED AS PART OF GENERAL CUSTOMS DECLARATION AT TIME OF LANDING OR TAKEOFF, 895 MEASURES TAKE FORM OF INCREASE IN AVIATION USER CHARGES.

10. SINCE U.S. LAW AND POLICY GOVERNING SHIPPING DIFFER SOMEWHAT FROM THOSE AFFECTING AVIATION MATTERS, SEPARATE INSTRUCTIONS BEING PREPARED REGARDING THAT ASPECT OF THESE DECREES. KISSINGER

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